



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

January 25, 2018

By ECF

The Honorable Katherine B. Forrest
The Honorable Analisa Torres
The Honorable Valerie E. Caproni
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: *United States v. Darcy Wedd, et al., 15 Cr. 616 (KBF)*
 United States v. Michael Pajaczkowski, 15 Cr. 606 (AT)
 *United States v. Lin Miao, 15 Cr. 628 (VEC)***

Your Honors:

The Government respectfully submits this letter in accordance with the Court's procedure regarding sentencings involving multiple defendants in factually related cases that are pending before different judges. The procedure provides in pertinent part that, when there is a defendant to be sentenced as a result of a guilty plea and there are active cases pending against other defendants "arising out of essentially the same criminal conduct" which are assigned to other judges, the Government to is provide a "brief statement identifying any such pending cases." Such statement is to be provided to the assigned sentencing judge and the judge(s) before whom the other cases are pending.

Here, the same set of operative facts gives rise to the cases against the nine defendants who were indicted before Judge Forrest¹ and the cases against defendants Lin Miao and Michael Pajaczkowski, who pled guilty before Judges Caproni and Torres, respectively. As alleged in the operative indictments and informations, and as proven at two trials² before Judge Forrest, the defendants were co-conspirators in a scheme to subscribe cell phone consumers to premium text messaging services that the consumers had not authorized and did not want. The scheme, which was known as "auto-subscribing," charged the victims \$10/month and resulted in total losses to consumers of over \$100 million. Miao and Pajaczkowski, who each testified three times before Judge Forrest, explained their roles in the scheme and their work with others who were indicted

¹ Those nine defendants are Jason Lee, Michael Pearse, Kevin Liu, Darcy Wedd, Erdolo Eromo Fraser Thompson, Francis Assifuah, Christopher Goff, and Eugeni Tsventnenko.

² Judge Forrest actually heard three trials on the subject, but the first resulted in a hung jury.

before Judge Forrest, including Jason Lee, Michael Pearse, Kevin Liu, Darcy Wedd, and Erdolo Eromo for Miao and Darcy Wedd, Erdolo Eromo, Fraser Thompson, Francis Assifuah, and Eugeni Tsvetnenko for Pajaczkowski.

Thus far, two defendants have been sentenced before Judge Forrest: Thompson to 60 months' imprisonment after conviction at trial and Assifuah to 33 months' imprisonment after a guilty plea. Four of the remaining defendants before Judge Forrest stand convicted and have the following sentencing or sentencing control dates: (1) Eromo, March 9, 2018, following a guilty plea; (2) Wedd, April 2, 2018, following conviction at trial; (3) Goff, May 18, 2018, following a guilty plea; and (4) Lee, May 25, 2018, following a guilty plea. The remaining three defendants before Judge Forrest – Pearse, Liu, and Tsvetnenko – are awaiting extradition from Australia.

Miao has a sentencing control date before The Honorable Valerie E. Caproni of March 16, 2018. Pajaczkowski does not currently have a scheduled sentencing date before The Honorable Analisa Torres.

Please contact me if you need any further information, and thank you for your consideration of this matter.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney
Southern District of New York

/s/ Jennifer L. Beidel
Sarah E. Paul/Richard Cooper/
Jennifer L. Beidel/Jilan Kamal
Assistant United States Attorneys
(212) 637-2326/1027/2212/2192

cc: Maurice H. Sercarz, Esq. (by ECF)
Robert Caliendo, Esq.
Counsel for Darcy Wedd

Michael J. Proctor, Esq. (by ECF)
Michael V. Schafler, Esq.
Counsel for Erdolo Eromo

Kenneth C. Murphy, Esq. (by ECF)
Counsel for Christopher Goff

Anthony Cecutti, Esq. (by ECF)
Richard Ma, Esq.
Counsel for Jason Lee

Victor Sherman, Esq. (by email)
Counsel for Lin Miao

Matthew Diehr, Esq. (by email)
Counsel for Michael Pajaczkowski